

ENERGY ASSISTANCE PROGRAM
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“MOA”) entered into by and between the **Indiana Housing and Community Development Authority (“IHCD”) and _____ (“Vendor”)** is effective as of October 1, 2019.

RECITALS

WHEREAS, IHCD administers the Energy Assistance and Leveraging Incentive Programs (“EAP”) pursuant to the federal Low-Income Home Energy Assistance Act, 42 U.S.C. § 8621 et seq.; 45 C.F.R. § 96.80, and the Leveraging Incentive Program contained in the Low-Income Home Energy Assistance Act, 42 U.S.C. § 8626a; and

WHEREAS, Vendor provides heat and/ or utility service(s) (the “Services”) to residents of the State of Indiana served by the Local Service Providers that are listed in “Attachment A”; and;

WHEREAS, Vendor desires to provide the Services in connection with EAP; and

WHEREAS, Vendor and IHCD desire to set forth their mutual understandings related to Vendor providing Services for individuals participating in EAP.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

- 1) **Term.** This MOA is valid for a two-year term (October 1, 2019 through September 30, 2021).
- 2) **Local Service Providers.** Vendor acknowledges that IHCD contracts with Local Service Providers to administer EAP and that the Local Service Provider will notify Vendor of client EAP eligibility and provide Vendor with the documents necessary to submit claims for payment under EAP (called the “Pledge”). Vendor shall follow the processes set forth by the Local Service Provider, and shall submit all such required documents to the Local Service Provider.
- 3) **Vendor Responsibility for other location(s).** (A location(s) is a company that is owned or controlled by the Vendor, for which the Vendor is normally referred to as the parent company, parent, or holding company for that location). The Vendor understands that if it is a parent company it will be considered the fiscal agent for other location(s) that meet the criteria set forth above. Therefore, the Vendor must assume primary responsibility for the receipt and distribution of payments under this MOA to any location(s) identified in “**Attachment B,**” attached to this MOA, and made a part hereof. Accordingly, the Vendor will be required to identify all other location(s) under its umbrella structure that will be providing Services in **Attachment B**, if and only if the deposit information and W-9 are the same for all locations. Separate MOAs must be completed for each location if the deposit information and/or W-9 differ from the Vendor’s information. The Vendor will be liable for the obligations of its other location(s) under this MOA. Therefore, the Vendor must approve financial transactions and request that payments associated with the Services provided under this MOA be distributed to

a centralized location. The W9 and the payment method must be the same for each location under the Vendor's umbrella.

If any location under the Vendor's fiscal umbrella is sold or discontinues using the Vendor as its fiscal agent, then both the other location and the Vendor must immediately notify IHCD of this change. The other location must execute its own MOA and become a primary vendor and fiscal agent for EAP funds. The Vendor must update its Attachment B and execute an updated MOA that reflects this change. This is required each time this type of change occurs so that payments can be deposited into the proper bank account.

If the Vendor acquires a new location (s), then the Vendor must update Attachment B and execute an amended MOA to include the new company, each time this type of change occurs so that payments can be deposited into the proper bank account.

- 4) **Client Confidentiality.** The Vendor acknowledges that the Services to be performed by the Vendor pursuant to this MOA may require or allow access to data, materials, and information containing Social Security numbers or other personal information or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Vendor agrees to comply with the provisions of IC 4-1-10 and IC 4-1-11 regarding the release of Social Security number provisions and the notice of security breach. The Vendor agrees that notwithstanding this section, Sections 5) Cooperation, 7) Energy Consumption Data (also known as Performance Measures), and 8 Vendor Monitoring are mandatory.
- 5) **Cooperation.** The Vendor will cooperate with IHCD and the Local Service Provider by making available the following information regarding EAP clients/applicants: energy consumption and cost data, payment frequency, disconnection prevention, restoration of Services and arrearage amounts, account status and other data related to EAP. IHCD has obtained consent from the client to receive this information. This information will be used to report performance measures, which is a federally required report. IHCD will also use this information for Vendor monitoring, which is a federally required activity.

6) **Breach of Contract**

Failure to comply with any directive or request outlined in this MOA, may result in the IHCD determining the Vendor is in breach of this MOA. Vendor will have 30 days to remedy any breach of this MOA. Failure to correct, to IHCD's satisfaction, any breach of this MOA will result in payments to Vendor being suspended. In lieu of payments to the Vendor, utility benefit payments will be sent directly to EAP clients. EAP clients will still be protected by moratorium protections and may not have their service terminated during the moratorium period.

If Vendor is making a good faith effort to remedy any breach of this MOA, but has not successfully cured the breach within 30 days, IHCD may at its sole discretion approve an extension to the 30 day period.

- 7) **Energy Consumption Data (Also known as Performance Measures).** The Vendor agrees to make available to IHCD A energy consumption data and billing information for EAP clients for a period of the previous twelve (12) consecutive months of usage (This data includes all required customer payments, such as monthly service charge, usage charge, and taxes. However, expenditures should exclude optional charges such as appliance repair contracts, equipment purchases, and other special Services), upon request and at no charge. To “make available” means to provide data through a data transfer or a secure web portal within 60 (sixty) days of request. IHCD A has obtained consent from the client to receive this information. This information will be used to report performance measures.
- 8) **Vendor Monitoring.** IHCD A shall perform Vendor monitoring and review records that relate to the EAP Program, including but not limited to, verification of benefit being applied to client accounts, timely return of EAP funds due to overpayments or client no longer having an open account and Vendor’s compliance with moratorium requirements. Vendor shall cooperate with any IHCD A request and supply requested documentation within 30 (thirty) days.
- 9) **Eligibility Determination.** The Local Service Provider will send a transmittal (or batch of transmittals) to the Vendor for verification of the applicant’s name, address, account number, account balance, and service status. The Vendor must validate the information, sign the transmittal, and return to the Local Service Provider promptly for payment. Vendor must remove all inactive accounts from transmittals prior to returning the signed form to the Local Service Provider. The Vendor agrees that a signed transmittal form indicates that all accounts included on the transmittal are active on that date and benefits will be applied to these accounts. A benefit credit must be applied to the client account upon receipt of the transmittal, *not* upon receipt of actual funds.
- 10) **Acceptance of Payment.** All payments shall be made in arrears in conformance with State fiscal policies and procedures, and as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Vendor on “**Attachment C**”, which is attached to this MOA and made a part hereof. In order to be paid by check, a specific waiver form must be approved by the IHCD A Controller or its designee. The Request for Waiver form is attached to this MOA as “**Attachment D**”, and made available upon request to IHCD A. Within thirty (30) days of receipt of Vendor’s invoice from the Local Service Provider, IHCD A shall submit to Vendor a single aggregate ACH payment, or check for all individuals in EAP listed on the Vendor’s invoice. IHCD A will notify Vendors via e-mail upon submission of the ACH payment to Vendor’s account or the submission of the check.
- 11) **Application of Taxes.** The Client must receive credit for the full amount of its EAP benefit in accordance with Indiana Department of Revenue Guidance issued on April 3, 2013. The Vendor shall not deduct sales taxes from the EAP benefit. Taxes shall be applied to the client’s account.
- 12) **Unallowable Expenses.** EAP funds may not be applied to the following types of expenses: deposits, garbage, water/sewer, cable, service plans, repayment of fraud/theft losses or any other expenses that are not associated with utility service, as noted in IHCD A’s most recent EAP Manual posted on website: <http://www.in.gov/myihcda/eap.htm>.

13) Refund. A refund occurs when an EAP benefit was paid, but the account was closed and left a credit. The Vendor must return these funds to IHCD within sixty (60) days. The Vendor shall issue a check to IHCD in the amount of the over-payment along with the following information: the name of the Local Service Provider, the client's name, the client's account number and transmittal number.

14) Overpayment. An overpayment occurs when a monthly payment to Vendor exceeds the amount of money owed to the Vendor for a client for such month. The Vendor shall apply any overpayment to the client's account for the following month(s), as a credit as long as the client has active service with the Vendor. Overpayments are not owed to the client, nor should they be added into the Local Service Provider's budget. If the client no longer receives Services from the Vendor during the current or next month, the Vendor shall issue a check to IHCD in the amount of the overpayment, along with the following information: the name of the Local Service Provider, the client's name, the client's account number and transmittal number. Vendor shall return funds to IHCD within sixty (60) days of completing this process. Refunds and overpayments must be submitted on separate checks. The Local Service Provider must submit an overpayment remittance in IHCD Online (formerly referred to as a negative transmittal) as notification for payment. The Vendor must send the payment, along with the remittance to IHCD. Refunds and overpayments must be submitted on separate checks.

15) Non-Discrimination. Vendor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), the Drug Abuse Prevention and Treatment Amendments of 1978 (21 U.S.C. § 1101 et seq.), the Public Health Service Act of 1944 (42 U.S.C. §§ 290dd through 290dd-2), and all other non-discrimination regulations of the United States Government to ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, be excluded from participating in or denied the benefit of Vendor's services under EAP.

16) Equal Treatment. Vendor shall not treat any household receiving EAP benefits adversely because of such EAP assistance, including charging different or additional fees, costs, rates, or other such charges on the basis of a household's receipt of EAP benefits.

Moratorium. Pursuant to IC 8-1-2-121, Vendor acknowledges that from December 1st through March 15th of any year, Vendor cannot disconnect residential electric or gas service to any household that, on or after October 1st, is eligible for and has applied for assistance under the EAP program. The Vendor shall implement procedures to ensure that electric or gas utility service is continued while eligibility for such persons is being determined. A pledge is *not* required in order for a qualified household to be protected under moratorium. A "qualified" household is defined as a household that has submitted a complete application to its Local Service Provider or designee, and a staff person at that agency has determined or is determining that eligibility meets the program requirements. Pursuant to IC 8-1-2-121, the Vendor shall provide any residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay the delinquent account. Such an amortization agreement must provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program. An amortization agreement is subject to amendment on the customer's request if there is a change in the customer's financial circumstances. The Vendor may not, during the

heating season, terminate service to the dwelling because of the failure of the customer to pay his energy or fuel bills until fourteen (14) days after it serves notice upon the customer of its intent to terminate service. Even so, the Vendor cannot disconnect a client before March 15th of any year.

17) Use of Limiters and/or Meters by Vendor.

Pursuant to IC 8-1-2-121, between December 1 and March 15 of any year, EAP clients are protected from disconnection or termination of their residential gas or electric service by a municipally owned, privately owned, or cooperatively owned utility, as stated in Section 16. Vendors who are classified as municipally owned, privately owned, or cooperatively owned are considered “regulated utilities” under the Low Income Home Energy Assistance Program. The language contained in the Indiana Code does not limit moratorium protection based on the method that the regulated utility uses to provide electric or gas service. Therefore, if the Vendor renders services using limiters, meters or prepaid services it still must provide moratorium protection to EAP clients as prescribed in IC 8-1-2-121 and this MOA. See guidance from IURC dated November 19, 2014.

18) Registration with the Indiana Secretary of State. Vendor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

19) Fraud. Vendor must notify the Local Service Provider if it determines that any client has misrepresented information or failed to disclose information pertinent to determining the eligibility of EAP benefits for that client. Such notification may result in the termination and revocation of EAP benefits from the client’s account. Also, Vendor must notify IHCD immediately if Vendor identifies fraud on the part of the Local Service Provider and/or in the Vendor’s own company as it relates to the use of EAP benefits, EAP funding or the provision of Services.

20) Indemnification. Vendor shall indemnify, defend, and hold harmless IHCD, and its employees, agents, and officials, against any and all actions, liabilities, losses, damages, costs, or expenses which they may sustain, incur, or be required to pay by reason of any person suffering bodily injury, death, or property loss or damage as a result of any act or omission of Vendor, or any officer, agent, employee, or subcontractor thereof, in carrying out activities under this Agreement. Vendor shall require any subcontractor to indemnify Vendor and IHCD, and their employees, agents, and officials, as part of any subcontract issued pursuant to this Agreement. The IHCD shall not provide such indemnification to Vendor. The obligations set forth in this section shall survive the termination or expiration of this Agreement.

21) Record Keeping. Vendor agrees to maintain an adequate accounting system to allow verification and auditing of the amount of Services delivered to eligible households. Records must be retained for three years after the close of each program year. EAP program years begin October 1 and end September 30.

22) Choice of Law. The terms and provisions of this MOA shall be governed by and interpreted under the laws of the State of Indiana and any and all disputes hereunder shall be litigated in courts located in Marion County in the State of Indiana.

23) Independent Contractor. In the performance of this MOA, the parties acknowledge and agree that they are acting in an individual capacity and not as agents, employees, partners, joint

ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. The parties will not assume liability for any injury, including death, to any person, or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

24) Amendment. The terms and provisions of this MOA may be modified only through written amendment executed by the parties hereto.

25) IRS Form W-9. Vendor agrees to complete in full and return to IHCDA IRS Form W-9 (Request for Taxpayer Identification Number and Certification), the form of which is attached hereto as “Attachment E” and made a part hereof.

26) Local Service Providers. The Vendor provides Services to residents of the State of Indiana served by the Community Action Agencies listed in Attachment A, attached hereto and incorporated herein Vendor must complete Attachment A, List of Local Service Providers.

27) Notice to Parties. Whenever any notice, statement or other communication is required under this MOA, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to IHCDA shall be sent to:

Community Programs – Energy Assistance Program
Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204

B. Notices to the Vendor shall be sent to:

This should be a corporate contact, the person who will receive confirmation of transmittals or changes to the program:

Name: _____

Address: _____

City, State, Zip: _____

Email Address (required): _____

Phone Number: _____

C. Vendor Point of Contact

Point of contact for all data collection for Energy Consumption Data (number 7) and vendor monitoring (number 8) shall be stated below. Upon changes, IHCD A must be notified within 30 (thirty) days with a new contact person and all information below.

Name: _____

Address: _____

City, State, Zip: _____

Email Address (required): _____

Phone Number: _____

- 28) Funding Cancellation and Termination for Convenience.** When the Executive Director of IHCD A makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this MOA, it shall be canceled. Such determination shall be final and conclusive. This MOA may be terminated, in whole or in part, by the IHCD A whenever, for any reason, IHCD A determines that such termination is in the best interest of IHCD A by notice in writing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Vendor, or that the undersigned is the properly authorized representative, agent, member or officer of the Vendor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Vendor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this MOA other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the MOA, the Vendor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Vendor and IHCDA have, through their duly authorized representatives, entered into this MOA. The parties, having read and understood the foregoing terms of this MOA, do by their respective signatures dated below hereby agree to the terms thereof.

[Add e-signature statement]

[Add section guaranteeing that whomever signs this agreement has the authority to sign.]

Vendor

Company Name: _____

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

Indiana Housing and Community Development Authority

Signed By: _____

Printed Name: S. Kyleen Welling

Title: Chief of Staff and Chief Operating Officer

Date: _____

ATTACHMENT A

LIST OF LOCAL SERVICE PROVIDERS

| Check All that Apply | Agency | | Counties Served |
|-------------------------------------|---------------|--|---|
| <input type="checkbox"/> | AREA IV | Area IV Agency on Aging and Community Action Programs, Inc. | Boone, Carroll, Clinton, Hamilton, Hendricks, Tippecanoe, White |
| <input type="checkbox"/> | AREA V | Area V Agency on Aging and Community Services, Inc. | Cass, Howard, Miami, Tipton, Wabash |
| <input type="checkbox"/> | CANI | Community Action of Northeast Indiana, Inc. | Allen, LaGrange, Noble, Whitley, Steuben, DeKalb |
| <input type="checkbox"/> | CAPE | Community Action Program of Evansville and Vanderburgh County, Inc. | Gibson, Posey, Vanderburgh |
| <input type="checkbox"/> | CASI | Community Action of Southern Indiana, Inc. | Clark, Floyd, Harrison |
| <input type="checkbox"/> | CFS | Community and Family Services, Inc. | Adams, Blackford, Huntington, Jay, Randolph, Wells |
| <input type="checkbox"/> | CAPWI | Community Action Program, Inc. of Western Indiana | Benton, Fountain, Montgomery, Parke, Vermillion, Warren |
| <input type="checkbox"/> | HSI | Human Services, Inc. | Bartholomew, Decatur, Jackson, Johnson, Shelby |
| <input type="checkbox"/> | HUEDC | Hoosier Uplands Economic Development Corp. | Lawrence, Martin, Orange, Washington |
| <input type="checkbox"/> | ICAP | Interlocal Community Action Program, Inc. | Delaware, Grant, Hancock, Henry, Madison, Rush, Fayette, Wayne |
| <input type="checkbox"/> | LHDC | Lincoln Hills Development Corporation | Crawford, Perry, Spencer |
| <input type="checkbox"/> | MCC | Marion County Consortium | Marion |
| <input type="checkbox"/> | NCCAA | North Central Community Action Agencies, Inc. | LaPorte, Pulaski, Starke |
| <input type="checkbox"/> | NWICA | Northwest Community Action Agency, Inc. | Jasper, Lake, Newton, Porter |
| <input type="checkbox"/> | OVO | Ohio Valley Opportunities Inc. | Jefferson, Jennings, Scott |
| <input type="checkbox"/> | PACE | PACE Community Action Agency, Inc. | Daviess, Greene, Knox, Sullivan |
| <input type="checkbox"/> | REAL | REAL Services, Inc. | Elkhart, Fulton, Kosciusko, Marshall, St. Joseph |
| <input type="checkbox"/> | SCCAP | South Central Community Action Program, Inc. | Brown, Monroe, Morgan, Owen |
| <input type="checkbox"/> | SIEOC | Southeastern Indiana Economic Opportunity Corp. | Dearborn, Franklin, Ohio, Ripley, Switzerland, Union |
| <input type="checkbox"/> | TRICAP | Dubois-Pike-Warrick Economic Opportunity | Dubois, Pike, Warrick |
| <input type="checkbox"/> | WICAA | Western Indiana Community Action Agency, Inc. | Clay, Putnam, Vigo |

ATTACHMENT B

**MANDATORY LIST OF VENDOR'S OTHER
LOCATIONS**

**Subsidiaries must have the same deposit location and W-9 as the parent company, otherwise separate MOAs must be filled out for each location.
(Please add additional pages if needed)**

| Other Location(s) Legal Name | Other Location(s) Address (number and street, city, state, zip) | Other Location(s) Contact | Other Location(s) Phone # |
|------------------------------|---|---------------------------|---------------------------|
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ATTACHMENT C

Vendor ACH Authorization Form (Direct Deposit)

As required by IC 4-13-2-14.8, all payments shall be made in arrears in conformance with State fiscal policies and procedures, and by electronic funds transfer to the financial institution designated by the Vendor. If a buy-out or merger occurs, this form must be updated within 30 (thirty) days.

Please complete all areas and sign prior to returning. A voided check may be attached to this form.

(Name)

(Title)

(Address)

Funds Information

(Name of Financial Institution)

(Address of Financial Institution)

Checking or Savings (Circle the Account Type)

Financial Institution Routing Number: (9 Digits) _____

Checking/Savings Account Number: _____

These numbers are located on the bottom of your check as follows:

⌚ 123456789 ⌚ 1234567890123 ⌚
Routing Number Account Number

I hereby authorize the Indiana Housing and Community Development Authority (“IHCDA”) to remit payments to and initiate entries to: _____’s checking/savings accounts at the financial institution listed above, and, if necessary, initiate adjustments for any transactions credited/debited in error. This authority will remain in effect until IHCDA is notified by an authorized individual in writing to cancel it in such time as to afford IHCDA and the financial institution a reasonable opportunity to act on it. In addition, I certify that I have full authority to execute this authorization and grant the rights to IHCDA contained herein.

(Authorized Signature)

(Date)